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SUSTAINING A LIVING TRADITION:
CULTURAL LANDSCAPES AND SPECIAL USE PERMITS

by
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THIS PAPER WAS PREPARED AS A STUDENT PROJECT IN PARTIAL FULFILLMENT OF THE REQUIREMENTS OF THE PROFESSIONAL DEVELOPMENT FOR OUTDOOR RECREATION MANAGEMENT PROGRAM AT CLEMSON UNIVERSITY. IT IN NO WAY REFLECTS USDA FOREST SERVICE POLICY NOR ARE THE OPINIONS EXPRESSED THOSE OF ANYONE OTHER THAN THE AUTHOR.

ABSTRACT

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TITLE: Sustaining a Living Tradition: Cultural Landscapes and Special Use Permits

ABSTRACT: Many American Indian tribes and tribal communities still retain their traditional cultural beliefs and practices. Many of these traditions are inextricably tied to areas and resources located in former aboriginal territories now managed by the Forest Service (FS) as National Forests.

The FS' response to continuation of traditional practices on National Forests has been variable. The FS has tribal relations policies that emphasize sensitivity and acknowledgement of the special relationship between the agency and tribal governments. However, in many cases, Forests have treated spiritual activities as if they were recreational activities or other "special uses" that must be regulated, most often through issuance of a special use permit for group "events". There is a lot of uncertainty as to how to manage these activities under current regulatory mandates.

The purpose of this project is to persuade policy makers and managers to recognize the importance of culturally appropriate responses to traditional cultural activities in general and, in particular, ceremonial gatherings while applying regulations that are broader in scope. Recommendations for the development of agreements and other mechanisms that are sensitive to our roles and responsibilities vis-a-vis tribes and traditional practitioners are offered. This paper accompanies a videotape of spiritual leaders, Forest Service managers, and an attorney with the Office of the General Council discusses their perspectives on this issue in its larger cultural and legal context. Consultation with tribal governments, communities and traditional practitioners regarding specific issues and opportunities is emphasized.

KEYWORDS: Special Use Permits, Tribal Governments, Cultural Resources

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EXECUTIVE SUMMARY

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SUMMARY: The purpose of this project is to persuade policy makers and managers to recognize the importance of culturally appropriate responses to traditional cultural activities in general and, in particular, ceremonial gatherings while applying special use regulations that are broader in scope.

Many American Indian tribes and tribal communities still retain their traditional cultural beliefs and practices. Many of these traditions are inextricably tied to areas and resources located in former aboriginal territories now managed by the Forest Service (FS) as National Forests.

The FS' response to the continuation of traditional practices on National Forests has been variable. The FS has tribal relations policies that emphasize sensitivity and acknowledgement of the special relationship between the agency and tribal governments. However, in many cases, Forests have treated spiritual activities as if they were recreational activities or other "special uses" that must be regulated, most often through issuance of a special use permit for group "events". There is a lot of uncertainty as to how to manage these activities under current regulatory mandates.

I conferred with spiritual leaders and traditional practitioners and FS managers about the issue, potential solutions and ways to inform policy makers and managers. In order to present the issues in the larger context of traditional cultural activities and FS tribal relations, I produced a video and a companion paper.

EXECUTIVE SUMMARY (cont.)

The video is intended to be more comprehensive in its treatment of traditional California tribal practices on National Forests today. It presents four California Indian spiritual leaders and other traditional practitioners who discuss their views about spiritual values, ceremonies, and FS management. The issue of special use permits for ceremonial gatherings is introduced in this larger context. The last segment of the video surveys FS managers and an attorney with the Office of the General Council who also discuss their experiences.

The paper that accompanies the video is more focused on the special use permit issue. In my research and consultation I found that the concept of "cultural landscapes" helped articulate important distinctions in traditional community and agency views and ties to the land. Specific examples from California tribal communities illustrate how cultural survival is dependent on access to and use of forests in a traditional manner.

Based on my research, I identify several approaches for reconciling agency mandates and tribal needs. Tribal consultation is essential before a particular approach should be selected; the aim of this project is to emphasize the need for a process of developing a culturally appropriate response to traditional activities that might currently require a special use permit.

INTRODUCTION

Background

Many American Indian tribes and tribal communities still retain their traditional cultural beliefs and practices. Many of these traditions are inextricably tied to areas and resources located in former aboriginal territories now managed by the Forest Service (FS) as National Forests.

California tribal traditional beliefs stem from worldviews that are frequently associated with reciprocal relationships between humans and the rest of the environment. Practices include ceremonies that have taken place in certain areas at certain times of the year for generations prior to the establishment of a National Forest.

The FS' response to continuation of traditional practices on National Forests has been variable. In many cases, Forests have treated spiritual activities as if they were recreational activities or other "special uses" that must be regulated, most often through issuance of a special use permit for group "events". There is a lot of uncertainty as to how to manage these activities under current regulatory mandates.

The purpose of this project is to persuade FS policy makers to recognize the importance of culturally appropriate responses to traditional cultural activities in general and, in particular, ceremonial gatherings. The selection of this topic was urged by a spiritual leader and a Forest Recreation Staff Officer. Although both of them were separated by hundreds of miles and addressing issues on different forests from different perspectives, they were united in their interest in raising this issue.

The project consists of a video and this paper. Each product can stand alone; but each is designed to compliment the other. The video is intended to be more comprehensive in its treatment of traditional California tribal practices on National Forests today. It presents four California Indian spiritual leaders and other traditional practitioners who discuss their views about spiritual values, ceremonies, and FS management. The issue of special use permits for ceremonial gatherings is introduced in this larger context. The last segment of the video surveys FS managers and an attorney with the Office of the General Council who also discuss their experiences.

The paper that accompanies the video is more focused on the special use permit issue. The first section of the paper addresses the concept of "cultural landscapes" and establishes a foundation from which to discuss traditional community and agency views and ties to the land. Specific examples from California tribal communities illustrate how cultural survival is dependent on access to and use of forests in a traditional manner. The second section discusses the project's methodology, including a review of relevant literature and current FS policies. The concerns of several spiritual leaders and Forest Service officials regarding current management are summarized and discussed in the third section of this paper. The last segment evaluates alternative solutions and makes recommendations on how agency mandates and tribal needs might be reconciled.

Cultural Landscapes

In my experiences working within the FS and diverse clientele, I am frequently reminded of a story:

Claude Gellée was a great 18th century landscape painter. He became so much the authority over what the countryside should look like that "unvarnished" nature was unfavorably compared to the artist's renditions. Soon, society's elite, when travelling, would carry a small viewer, referred to as a "Claude glass", which enabled them to in effect "varnish" the landscape in a sepia haze as the master himself might have done so on canvas.

We all carry personal and organizational cultural filters that tint and "varnish" our view of the world. These influences extend to the decisions about how public lands should be used in general and, more specifically, how policies such as ecosystem or recreation management should be implemented.

Agencies today cannot afford to cling to old perceptions or merely substitute one Claude glass for another as they prepare to work with a multicultural society in the 21st century. Resource agencies must reflect diverse views and experiences in their policies and programs in order to respond to cultural as well as biological needs. This is particularly important as many agencies prepare to implement ecosystem management, which includes the human dimension and, in principle, guides recreation management (cf. Manley, P.N., et al 1995).

One would think that the need for incorporation and integration of cultural perspectives would be obvious given that the FS developed ecosystem management (and recreation management for that matter) in response to shifting public sentiment regarding how public lands should be treated. However, land management agencies are more adept at dealing with technical solutions to resource problems than with their cultural implications. The FS in particular has been characterized as emphasizing technology and more recently "objective" scientific perspectives while traditional indigenous peoples emphasize their emotional or spiritual attachment. In the urgency to address the many compelling problems associated with ecosystem management--such as declining wildlife populations and habitat loss--the human component could be overlooked or be reduced to a single dimension such as economic outcomes.

We need to be more inclusive. National Forests and other public lands must be seen as cultural landscapes within ecosystems. One agency, the National Park Service, has articulated what a cultural landscape is in a manner that would be useful to many other agencies including the FS:

...a geographic area, including both cultural and natural resources, including the wildlife or domestic animals therein, that has been influenced by or reflects human activity or was the background for an event or person significant in human history. (National Park Service 1987:1)

One type of cultural landscape is the ethnographic landscape defined as:

...a landscape characterized by use by contemporary peoples, including subsistence hunting and gathering, religious or sacred ceremonies, and traditional meetings. A difficult resource to manage because its significance derives from human interaction with or consumptive use of the natural environment. To effectively manage the area, the park manager must assure perpetuation of the resources, should afford contemporary groups or individuals the opportunity to continue their traditional uses, and must provide for the general park visitor (National Park Service 1987:2).

Cultural landscapes reflect the nexus between nature and culture. How a society views the lands it lives and works on is, in part, a function of how a society defines its role with respect to nature.

Thus, land management policy, including ecosystem management, is not culturally neutral; it always reflects the worldview and values of the agency and the larger society. As the FS attempts to be more responsive to a multicultural society, policy and programs need to be designed, delivered and implemented in order to respond to diverse worldviews and cultural values as well as to meet biological objectives. We should also acknowledge that we must not only accommodate but also value the cultural perceptions and knowledge of others in order to get a broader worldview of the landscapes we manage. This is particularly important for recreation management which often is the program that addresses the majority of public use of National Forests.

Cultural needs associated with forest ecosystems vary, but in general, for many traditional communities, cultural identity, continuity, and ultimately, cultural survival are dependent on continued access to and use of certain resources and areas. For example, for many California Indian tribes, access to and use of certain plants such as sedges, animals such as deer and locations such as ceremonial areas are critical to continuation of whole cultures (see Blackburn and Anderson:1993). Some plants and animals provide food, medicines, and materials for utilitarian and ceremonial items. Other resources are essential for items that play key roles in maintaining an individual or family's well being or marking the onset of adult roles in the society. For example, certain Northwest California tribal societies, it is essential that certain regalia be constructed, utilizing materials that can only be obtained from the forest. This regalia must be used in a ceremony for a young girl to be accepted as a young woman.

The gathering of plants, hunting and fishing, and other activities are often accompanied by songs, prayers, and ceremonies that express thanks and also reinforce social identity and proper relationship between the traditional community and the world they live in. In addition to these daily expressions, there are the other ceremonies that renew the earth or have other critical purposes that involve most of the community gathering in specific locations at certain times in the year. Some areas are the only place certain ceremonies can be conducted (cf. Kroeber, A.L. and E.W. Gifford 1949). Simple substitutions of resources or locations are often not an option (see Theodoratus and LaPena 1992 and Walker 1996).

The significance of these resources and areas must be understood in their cultural context and in their relationships. As the video illustrates, whole societies are dependent on cultural landscapes which continue to provide the resources and locations necessary for their survival as a culture as long as the people can take care of that landscape:

To live in spiritual and physical balance in the same small area for thousands of years without feeling the need to go somewhere else, as my people did, requires restraint, respect, and knowledge of the ways of each animal and plant. As my mother taught me, and she, in turn, was taught, the plants, animals, birds--everything on this earth--they are our relatives, and we had better know how to act around them, or they'll get after us" (Smith 1993: frontispiece).

Furthermore, given the special relationship between tribes and the FS, we need to insure that our programs are appropriate to their political status and their traditional, cultural ties.

The FS needs to be more aware of the values that shape land management policies, particularly ecosystem and recreation management. In today's world, land management should be informed by a variety of sources for knowledge and values. Ecosystem management should also provide for cultural subsistence as well as biological needs. And recreation programs should be responsive to a variety of cultural activities and needs. As resource agencies strive to meet the needs of a muticultural constituency, we need to view the land through many people's eyes, not just our own favorite Claude glass.

METHODOLOGY

A literature search was conducted at Clemson in 1992 and updated in 1996, utilizing many of the same research review tools and concepts obtained at the Clemson short course (the Clemson courses also contributed in other ways, particularly the class taught by Myron Floyd on Social Responsiveness with Ethnic and Cultural Visitors and Jill Osborne's discussion on cultural resources).

The literature review revealed that while there was information on traditional land uses and current land management practices that affect those uses, there were no primary or secondary references addressing the specific problem here--facilitating the development of culturally appropriate and legally sound policy for the management of traditionally based ceremonies on National Forests.

The background research focused on the review of current federal policies, emphasizing the FS' programs given its unique mission vis-a-vis national forests. It was also critical to directly elicit information from the groups most affected--spiritual leaders, traditional practitioners and forest managers.

The current relevant policies are addressed first and then the findings of the interviews are presented.

SELECTED POLICIES

In 1994, the President issued an Executive Memorandum that emphasized government-to-government relationships between tribes and agencies like the FS. The complete policy is included in Appendix A. Relevant excerpts are presented below with emphasis added:

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respecting of tribal sovereignty.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency **operates within a government-to-government relationship** with federally recognized tribal governments.

(b) Each executive department and agency **shall consult**, to the greatest extent practicable and to the extent permitted by law with tribal governments **prior to taking actions** that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency **shall assess the impact of federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered** during the development of such plans, projects, programs and activities.

(d) Each executive department and agency **shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments** on activities that effect the trust property and/or governmental rights of the tribes.

In summary, the Executive Memorandum emphasizes:

development of a government-to-government relationship
consultation in agency policy development, planning and projects.

On May 24, 1996 President Clinton issued another Executive Order addressing sacred sites (See Appendix A). The most relevant section is quoted below, with emphasis added.

Section 1. Accommodation of Sacred Sites.

(a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions,

(1) **accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners** and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

The FS has specific direction regarding tribal relations (FSM 1563; emphasis added):

1. Maintain a governmental relationship with federally recognized tribal governments.

Take the time to meet with tribal governments on a regular basis. Build and enhance a mutual partnership. Gain an understanding of each other to develop an effective governmental relationship. Pursue initiatives and efforts similar to those conducted with State governments.

2. Implement our programs and activities honoring Indian treaty rights and fulfill legally mandated trust responsibilities to the extent that they are determined applicable to National Forest System lands.

Visit our tribal neighbors. Learn about their treaties and rights. Talk with them about areas of mutual interest. Reconcile Indian needs and claims with the principles of good management, multiple use, and National Forest laws and policies. Attempt reasonable accommodation without compromising the legal positions of either the Indians or the Federal Government. Work together to develop ways to accomplish the goals of this policy.

3. **Administer programs and activities to address and be sensitive to traditional native religious beliefs and practices.**

Walk the land with Native Americans to gain and understanding and appreciation of their culture, religion, beliefs, and practices. We must identify and acknowledge these cultural needs in our activities. We consider these values an important part of management of the National Forests.

4. Provide research, transfer of technology, and technical assistance to Indian governments.

Together, develop research and environmental programs to meet Native Americans' objectives. Extend State and Private programs to tribal governments Exchange and share technical staffs and skills.

(USDA FS 1993)

I want to turn now to examine the policy that affects tribal (among others) use of National Forests:

Authorities for addressing use of National Forests includes the Organic Act of June 4, 1897, 30 Stat. 35 (16 U.S.C. 551), and FS policy regarding "all uses" of National Forests cited in 36 CFR Chapter 11, 251:

251.50 Special Uses.

(a) All uses of National Forest System land, improvements and resources, except those provided for in the regulations governing the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222), are designated "special uses" and must be approved by an authorized officer.

Furthermore, 251.50 (c) states:

A special use authorization is not required for the noncommercial use or occupancy of National Forest System lands or facilities for camping, picnicking, hiking, fishing, hunting, horse riding, boating, or similar recreation activity, unless one or more of the following circumstances exists:

...

(3) The use is for a group event as defined in 251.51 of this subpart.

...

251.51 defines group event as:

an organized or publicized activity involving or expecting to attract, 25 or more persons and the use of National Forest System lands, resources, or facilities.

In that case, a permit would be required. A permit is defined in the same section (251.51) as:

a special use authorization which provides permission without conveying an interest in land, to occupy and use National Forest System land or facilities for specified purposes and which is both revocable and terminable.

TRIBAL AND FOREST VIEWS

I conferred with four spiritual leaders, three traditional practitioners, three line officers and three other forest staff regarding regarding special use permits and ceremonial activities. The information obtained in the discussions were supplemented with data derived during the course of group meetings with tribal communities regarding land management activities, including recreation and requests from FS field staff for assistance on specific problems associated with the issue.

The discussion protocol simply consisted of asking the participant what their experience was like in obtaining or dispensing approval for a ceremonial gathering on national forest land. The video tape contains selected responses to illustrate the views on the issue which are summarized and discussed below. Laughing Coyote, a Choinumni/Mono spiritual leader, encouraged the author to pursue the production of the video which accompanies this paper in order to put the special use permit issue into a cultural context. I also felt it was important to have the audience hear these tribal members directly.

The views expressed are those of the individual tribal members, but reflect the concerns of many others. It is clear that the national forests referred to in the video have the characteristics of cultural landscapes, as discussed earlier, of great importance to the community.

Caleen Sisk-Franco introduces the video and the spiritual leaders that will discuss their ideals, beliefs and places. She also emphasizes that the forests that are shown in the video were not wilderness; they were the homes of California tribes whose "jobs" were to care for the land.

As Laughing Coyote notes, the land is still critical for the tribal community. Gatherings that bring young people together with their elders emphasize the importance of traditional spiritual values and cultural continuity. Antonio Romero talks about one particular area, Sapaski, and the importance to take care of it in light of other uses because of its function as a church. And Ron Alec discusses how his tribe had to sneak around to practice their religion because of federal policy.

Later in the film, Laughing Coyote brings up the issue of permits and the bureaucracy of applying for a permit to conduct their ceremonies. Unlike other religions where sacred areas are selected or created (eg., churches that can be sanctified, desanctified, or even moved), many tribal sacred lands are permanent features in the landscape.

In small groups and in one-on-one conversations, other spiritual leaders, traditional practitioners, and other tribal members have expressed concerns about the intrusiveness and the trivialization of their spirituality in the course of having to go through a permit process that treats the applicant as a recreationist and the spiritual practices as recreational activities.

FS officers have also expressed frustration. The video illustrates the concerns a number of FS officials have as they try to maintain good relationships with tribes and address their other mandates. The representative from the Office of General Counsel in particular discusses the fine line between establishing or promoting a religion and not presenting barriers to the free exercise constitutional right.

I have been contacted by Recreation Staff Officers, District Rangers, and Forest Supervisors who have indicated uncertainty as to how to balance regulatory requirements with their tribal relations responsibilities. I have also contacted FS personnel on this issue in the course of the tribal relations program and the development of the video and paper.

The lack of knowledge about the importance and the character of tribal gatherings produces an awkwardness and, at times, an unnecessary anxiety. In this climate, the FS may not ask enough or may ask too much or ask inappropriately (see Gallagher 1988 and Noland and Gallagher 1989). Also, the agency may not acknowledge that they are working with another tribal government or traditional practitioner--someone other than a recreationist. And unfortunately, at times, stereotypical assumptions or generalizations from one tribal group or activity to another interfere with an assessment of an application for a permit.

Specific concerns FS managers have expressed:

How to reflect the government-to-government relationship in the permit process and when is it appropriate.

How to find out enough about the activities so as to develop the appropriate stipulations and still respect the confidentiality and sensitive nature of any ceremonial practices and spiritual beliefs.

How to ask--who, when and where--in order to comply with tribal relations policy cited above.

CONCLUSION

On the one hand, there is policy to acknowledge and respect the distinctive status and relationships we have with tribal governments. On the other, there is the special use permit policies that are silent on this distinction. As the discussion above illustrates, what these regulations mean to some tribal members is that despite the Presidential Memorandum and the FS sensitive tribal relations policy, they need to apply to the government whenever they gather to practice their religion on a ceremonial site if it is located on a national forest.

While some may argue, anyone else would have to do so, the fact remains that for many indigenous societies, they do not have other options that are available to other cultures, i.e., establishing a church elsewhere, as mentioned earlier. Also, federal agencies like the FS have a special relationship with tribal governments and communities. The following summarizes the specific perspectives are presented in more detail in the video, but summarized below.

There is a lot of common ground between the two sets of concerns:

1. Both groups want an agreed upon process that is respectful of the people and their laws--policy and traditions.
2. All parties want acknowledgement of their their status--tribal, government-to-government, FS jurisdiction, tribal spiritual jurisdiction.

Although this project focuses on articulating the need for culturally appropriate policies, I do want to offer some suggestions for further consideration. The common themes identified above will serve as criteria for evaluating alternatives below.

Alternatives

Alternative 1: Status Quo

This would consist of requiring special use permits from tribal governments and spiritual leaders as any other member of the public.

This would meet minimum legal standards. However, it may not further FS/tribal relations given the discussions presented above and does not address criterion 2.

Alternative 2: No permits

Tribal governments, organizations, and traditional practitioners would be allowed to gather together without permit. There would have to be a another mechanism developed for ensuring that competing uses are not scheduled at the same time and place.

At this time we have no current authorities for exempting tribal governments or individuals from the regulations. Legislation and regulation could be rewritten to provide for a waiver of permits for tribal governments and/or traditional practitioners. Such a revision would require further tribal consultation and analysis to address the complexities and the variability there is among the distinct and sovereign tribal governments and traditional practitioners. Other considerations would including crafting such policy to avoid constitutional issues identified earlier.

Alternative 3: Utilize current permit requirements, but apply in a more sensitive manner.

There are a number of approaches one could take now in this alternative. Agreements between tribal governments, organizations or traditional practitioners could be developed that acknowledge the relationship the FS has with federally recognized tribes and the importance of certain areas and resources to tribes and traditional practitioners. The consultation should be guided by those knowledgeable about tribal interests, cross-cultural communications, how to elicit sensitive information when there is a need to know, and what needs to be kept confidential. Furthermore, cultural landscapes, in consultation, could be identified and protected in land management planning activities. The permit system could be used as a way of reserving an area for tribal use at a certain time instead of just a system in which tribes have to "ask permission".

Tribes are not another special interest group or just members of the general public (e.g., recreationists). Their special relationship to the FS and to the National Forests can be acknowledged in an agreement and the special use permit. The agreement can be specifically referenced in any permit. Appendix B consists of a model agreement that can be tailored to meet the needs of a Forest and Tribe. It is largely based on an actual agreements developed for a Tribe and a District (by Lorrie Planas and other Sierra N.F. staff), but updated and expanded to be applicable to a variety of circumstances.

Again, I want to emphasize the importance of consultation with a tribal government, community and individual practitioner. Given the autonomy of tribal governments, one cannot assume that what is an issue for one tribe is an issue for another. Issues change over time as well. Also, at times, a tribal government may not necessarily represent a particular constituent who may want to work directly with the FS regarding a cultural gathering. This may necessitate working directly with that tribal member or with an organization. Unrecognized tribes may enter agreements as organizations instead of as a federally recognized tribe.

We need to recognize the importance of culturally appropriate responses to traditional cultural activities in general and, in particular, ceremonial gatherings. As the FS attempts to strengthen its relationship to tribes, policy and programs, (e.g., special use policy and recreation programs) need to be designed, delivered and implemented in consultation with tribes in order to respond to diverse cultural values as well as to meet biological objectives. Hopefully, this video and paper contributes to a better understanding of our responsibilities vis-a-vis tribal governments and communities.

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APPENDIX A

AMERICAN INDIAN/ALASKA NATIVE POLICY:
THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

April 29, 1994

April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with
Native American Tribal Governments

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respecting of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that effect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support on cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of the Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register

William J. Clinton

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

May 24, 1996

EXECUTIVE ORDER

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedures Act (5 U.S.C.551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 24, 1996.

APPENDIX B

MEMORANDUM OF UNDERSTANDING
BETWEEN
_____ RANGER DISTRICT OF THE _____ NATIONAL FOREST
AND
_____ TRIBE

1. PURPOSE

The goal of this Understanding is to establish the long-term use of a traditional cultural property on Forest Service managed land and to promote a cooperative and working relationship between the Forest Service and local Tribal governments and communities. It is the intention of the parties to this understanding that this Agreement serves to facilitate a mutual awareness of the resource management of the _____ National Forest and the traditional and spiritual values of local Indian people.

Tribal Members

WHEREAS, the lands that comprise the _____ National Forest have been the homelands of indigenous people who for thousands of years have conducted ceremonies relevant to their lifeways, and

WHEREAS, members of the _____ Tribe have been conducting traditional ceremonies for many generations in the area and recognize this area as necessary for the continuance of this ceremony, and

WHEREAS, the members are attempting to maintain their Indian culture and teach it to the young, and

WHEREAS, the members understand that the forest is used for many purposes and that services are provided to all people who choose to enjoy the National Forest, and

WHEREAS, the members are willing to share their culture and knowledge with the Forest Service in the development of an educational/interpretive program for the area towards a common goal of caring for the land and all living things.

Forest Service

WHEREAS, the Executive Order on Sacred Lands (May 24, 1996) and the policy of the Forest Service as stated in FS Manual 1563 provides access and use of Forest Service lands for Native American traditional ceremonies,

WHEREAS, the _____ National Forest is committed to furthering a cooperative working relationship with all tribal groups who have ties to present Forest Service managed lands and working on a government-to-government basis with tribal governments, consistent with the Executive Order of 1994 on Government-to-Government Relations and FS Manual 1563,

WHEREAS, the _____ area is not only recognized as significant to the local Indian community, but it is a location where other forest visitors frequent, and

WHEREAS, the _____ ceremonial area when not in ceremonial use, can serve the multiple-use needs of forest visitors by the development of an educational/interpretive plan consistent with FS Manual 2724.32, and

WHEREAS, it is the intention of the parties to this Agreement to strive for a land use that will be of benefit to all interested parties,

NOW THEREFORE, the _____ National Forest and the members of the _____ of the _____ Tribe agree to abide by the terms of this Agreement as to the use of the area specifically designated within the area.

2. AGREEMENTS

A. As mutually agreed upon, the _____ National Forest agrees to:

- 1) Continue to support access to the _____ area for religious use by local Native Americans and recognize area according to Map No. 1 as a traditional cultural property for management purposes.
- 2) Recognize this agreement as a supportive document to a ten-year Special-Use Permit for conducting religious ceremonies at i.e., the SUP/MOU reserves the area during ceremonial activities.
- 3) The restriction of the traditional ceremonial sites from other forest visitors.
- 4) Provide technical assistance to tribal members to assist in the development of an educational/interpretive program for Haslett Basin area forest visitors.

B. As mutually agreed upon, the members of the _____ Tribe agree to:

- 1) Update the Operating Plan annually regarding activities related to the SUP and notify the Forest Service 60 days prior to the annual _____ ceremony. Tribal members will place signs to alert other forest visitors of the activities.
- 2) Notify the Forest Service of negative encounters with other forest visitors during ceremonial activities.
- 3) Construct and maintain all religious structures used during ceremonies. Construction will be coordinated with the Ranger District.
- 4) Follow the standard guidelines for large gathering at non-designated camp sites; e.g., provide restroom facilities.
- 5) Cooperate in the development of educational and interpretive programs for other forest visitors and participate in resource management programs involving the _____ area; e.g., Ecosystem Management.

C. PROVISIONS

- 1) This Agreement represents compliance with Forest Service Manual 1563.03, effective 6/90, and FS Manual 2723.12, effective 10/6/92. It is not to be construed that the Forest Service makes regulations for or against any type of religion. This Agreement is to preserve and protect the right of Native Americans in the free exercise of their traditional religious beliefs.
- 2) The principal points of contact for execution of this Agreement shall be the District Ranger of the _____ Ranger District, National Forest and the Chairperson of the _____ Tribe.
- 3) This Agreement may be modified by mutual written consent of all the parties. Any party may withdraw from this Agreement by written notice to every other party.
- 4) There shall be no discrimination against any person because of race, creed, color, religion, national origin, handicap, or sex.

IN WITNESS HEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED.

Tribal Chairperson

Tribe

District Ranger

Ranger District

National Forest

DATE: _____

DATE: _____

ADD TRADITIONAL LEADER (OPTIONAL)

ADD FOREST SUPERVISOR, DEPENDING ON LEVEL OF DECISION

Forest Supervisor

National Forest

DATE: _____